

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DARRYL ASHMORE,

Plaintiff,

vs.

Case No. 9:16-cv-81710-KAM

NFL PLAYER DISABILITY &
NEUROCOGNITIVE BENEFIT PLAN,

Defendant.

RESPONSE TO PLAINTIFF'S INITIAL INTERROGATORIES

1. Please state the name, address, position, and employer of the individual(s) completing these Interrogatories.

ANSWER: The answers to these interrogatories were completed by Michael L. Junk. Mr. Junk is of counsel with Groom Law Group, Chartered.

2. Identify all of Defendant's claims procedures, internal rules, guidelines, protocols or manuals in existence for the processing, investigation and/or determination of applications for total and permanent ("T&P") benefits, and separately indicate which of those internal rules, guidelines, protocols or manuals identified were relied upon by Defendant in making all benefit determinations, whether approval or denial of benefits, in Plaintiff's application for T&P benefits.

ANSWER: Defendant interprets this interrogatory as seeking the disclosure of any internal claims manuals, procedure manuals, or other written guidelines available to or used by NFL Player Benefits Office staff, the Disability Initial Claims Committee, or the Disability Board when processing or deciding Plaintiff's application for T&P benefits.

Subject to the foregoing interpretation, Defendant has no such documents, other than those which have already been produced to Plaintiff as part of the administrative record, and the summary plan description, which has been produced to Plaintiff in response to Plaintiff's initial requests for production, *see* ASHMORE-PROD-043–ASHMORE-PROD-104.

To the extent Plaintiff's request seeks the disclosure of documents different from or in addition to those falling within Defendant's interpretation, Defendant objects on the

grounds that the interrogatory is vague and ambiguous, overly broad as to time and scope, and not reasonably calculated to lead to the discovery of evidence relevant to Plaintiff's claim(s).

3. Identify, by name, address and telephone number, all individuals of whom Defendant is aware, by personal knowledge or belief, to have or possibly have knowledge of facts relevant to this subject matter of the lawsuit generally, and for each of those individuals who have or might have such knowledge, state with specificity the nature of the facts known or believed to be known to those individuals.

ANSWER: The answer to this interrogatory may be determined by examining the administrative record, which has already been compiled and produced to Plaintiff. Because the burden of deriving or ascertaining the answer will be substantially the same for either party, Defendant simply refers Plaintiff to the administrative record as permitted by Rule 33(d) of the Federal Rules of Civil Procedure.

To the extent Plaintiff seeks discovery beyond the administrative record, Defendant objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad to the extent that it asks Defendant to identify "all individuals" who "have or possibly have knowledge of facts relevant to th[e] subject matter" of this case. Defendant does not know what facts Plaintiff believes are "relevant," what individuals "have or possibly have" knowledge of those facts, or how any such individual's knowledge of said facts could be relevant to Plaintiff's challenge of the Disability Board's determination of Plaintiff's claim for benefits. Defendant's counsel, for example, has reviewed Plaintiff's complaint and the administrative record produced to Plaintiff, and therefore has knowledge of relevant facts. But counsel's knowledge is immaterial to Plaintiff's claim, particularly given that the facts considered by the Disability Initial Claims Committee and the Disability Board are contained in the administrative record.

4. State the basis upon which Mr. Ashmore's application for T&P benefits was denied as communicated to him via letter dated November 03, 2015, and articulate exactly why he was not entitled to such benefits, including stating each and every fact which was utilized in reaching that determination.

ANSWER: Plaintiff's application was denied under Plan Section 3.2(c) because he failed to attend a scheduled neutral examination. *See* ASHMORE-369- ASHMORE-370; ASHMORE-811- ASHMORE-813. The administrative record contains the facts "utilized" in reaching that determination.

5. Identify all individuals, employees, representatives, or agents of Defendant who comprised the Disability Initial Claims Committee (“Committee”) on November 02, 2015, when the Committee reached the determination to deny Mr. Ashmore’s application for T&P benefits, and identify all other individuals involved in the decision to deny Mr. Ashmore’s application for T&P benefits.

ANSWER: The Disability Initial Claims Committee consists of three members. One member is appointed by the NFL Players Association. One member is appointed by the NFL Management Council. And the third member is the Plan’s Medical Director. *See* Plan Section 9.4(a), ASHMORE-042.

On November 2, 2015, the members of the Disability Initial Claims Committee were (1) Chris Smith (appointee of the NFL Players Association); (2) Patrick Reynolds (appointee of the NFL Management Council); and (3) Dr. Alan Jackson (Medical Director).

Ms. Smith and Mr. Reynolds made the initial decision on Plaintiff’s application for benefits. *See* ASHMORE-352- ASHMORE-357.

To the extent this interrogatory seeks the identify of “all other individuals” who may have been somehow “involved” in the Disability Initial Claims Committee’s decision, Defendant objects on the grounds that it is vague and ambiguous, overly broad as to time and scope, and not reasonably calculated to lead to the discovery of evidence relevant to Plaintiff’s claim(s).

6. Please identify all documentation, including all medical records, relating to Mr. Ashmore’s application for T&P benefits that were presented to the Committee and any other decision makers for review prior to its November 02, 2015 meeting.

ANSWER: The following documents were presented to the Disability Initial Claims Committee:

- ASHMORE-073- ASHMORE-080
- ASHMORE-091- ASHMORE-094
- ASHMORE-096
- ASHMORE-098
- ASHMORE-100- ASHMORE-101
- ASHMORE-110- ASHMORE-111
- ASHMORE-113- ASHMORE-341
- ASHMORE-343- ASHMORE-347
- ASHMORE-349- ASHMORE-350

The Disability Initial Claims Committee was the only “decision maker” with respect to the initial decision on Plaintiff’s application for benefits.

7. Please list the names of all individuals who reviewed the documentation identified in interrogatory number 6, their position, and the date(s) they reviewed the documentation.

ANSWER: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous, overly broad as to time and scope, and unanswerable as phrased. Defendant also objects to this interrogatory on the grounds that it is overly broad to the extent that it seeks discovery beyond the administrative record, which has already been compiled and produced to Plaintiff.

8. Identify all documents, manuals, internal rules, procedures, and guidelines that states a player applying for T&P benefits is required to attend a medical examination by a physician chosen by the Committee in order to be approved T&P benefits.

ANSWER: The following documents state that every Player who is referred for a Plan neutral evaluation must attend that evaluation in order to be eligible for benefits:

- Total and Permanent Disability Benefits Application, *see* ASHMORE-073- 076
- Notice of Required Medical Examination, *see, e.g.*, ASHMORE-082
- Confirmation and Scheduling of Required Medical Examination, *see, e.g.*, ASHMORE-084- ASJMORE-085
- Plan Document, Section 3.2(c), *see* ASHMORE-012

The foregoing list is illustrative, not exhaustive, and Defendant objects to Plaintiff's interrogatory to the extent it requires Defendant to identify each and every document reflecting or relating to the rule stated in Plan Section 3.2(c).

9. Identify all documents, manuals, internal rules, procedures, and guidelines that addresses how Defendant handles requests for travel accommodations and requests to reschedule and/or relocate medical examinations.

ANSWER: Refer to Defendant's response to interrogatory number 2.

10. State the basis for Defendant's decision to relocate the medical examinations initially scheduled for October 16th, 20th, and 22nd of 2015, and identify all individuals involved in that decision.

ANSWER: NFL Player Benefits Office staff (Elise Richard and Paul Scott) made the decision to reschedule and relocate the Plan neutral evaluations initially scheduled for October 16, 20, and 22. They did so in response to Plaintiff's complaints and in an attempt to accommodate Plaintiff's alleged travel limitations.

11. State the basis for Defendant's decision to refuse to grant Mr. Ashmore's request for travel accommodations for the medical examinations rescheduled to take place November 2nd, 3rd, and 4th of 2015, and identify all individuals involved in that decision.

ANSWER: NFL Player Benefits Office staff (Elise Richard and Paul Scott) attempted to but could not "accommodate" Plaintiff, under the circumstances. Plaintiff was advised that accommodations could not be made, and therefore the Plan neutral evaluations would go forward as scheduled on November 2, 3, and 4. Plaintiff's application was then presented to the Disability Initial Claims Committee, and the Committee denied the application under Plan Section 3.2(c) because Plaintiff failed to attend a scheduled neutral examination. *See* ASHMORE-369- ASHMORE-370; ASHMORE-811- ASHMORE-813.

12. Identify all notes, comments, correspondences, and documents, generated or reviewed by any and all employees, agents, or representatives of Defendant related to Plaintiff's requests for, and Defendant's refusal to, accommodate Mr. Ashmore.

ANSWER: Refer to Defendant's response to request for production number 14.

13. Identify all individuals who reviewed Plaintiff counsel's letter dated October 15, 2015, the date(s) the letter was reviewed, and the result of all such reviews.

ANSWER: The administrative record contains a letter from Plaintiff's counsel's dated October 15, 2015 and enclosing an unsigned letter of the same date from a Dr. Frank Conidi. *See* ASHMORE-100; ASHMORE-393. That letter was presented to the Disability Initial Claims Committee on October 29, 2015, prior to its decision on Plaintiff's application. The letter was presented to the Disability Board on or before August 17, 2016, prior to its decision on Plaintiff's application/appeal. The "results" are reflected in the November 3, 2015 letter sent on behalf of the Disability Initial Claims Committee, *see* ASHMORE-369- ASHMORE-370, and the August 24, 2016 letter sent on behalf of the Disability Board, *see* ASHMORE-811- ASHMORE-813.

To the extent Plaintiff seeks additional information, Defendant objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad to the extent that it asks Defendant to identify "all individuals" who "reviewed" Plaintiff's counsel's October 15, 2015 letter and the "results" of any such reviews. Defendant does not know what "reviews" or "results" Plaintiff believes are relevant to Plaintiff's challenge of the Disability Board's determination of Plaintiff's claim for benefits. Defendant's counsel reviewed the October 15, 2015 letter for purposes of preparing Defendant's response to these interrogatories, for example, but that "review" and the "results" of that review are immaterial to Plaintiff's claim.

14. State whether Plaintiff counsel's letter dated October 15, 2015 was presented to the Committee and, if so, the date the letter was presented and the result of the Committee's review of the letter.

ANSWER: Yes. Refer to Defendant's response to interrogatory number 13.

15. Identify all individuals who reviewed Plaintiff counsel's letter dated October 27, 2015, the date(s) the letter was reviewed, and the result of all such reviews.

ANSWER: The administrative record contains a letter from Plaintiff's counsel's dated October 27, 2015. *See* ASHMORE-110- ASHMORE-111; ASHMORE-407- ASHMORE-408. That letter was presented to the Disability Initial Claims Committee on October 29, 2015, prior to its decision on Plaintiff's application. The letter was presented to the Disability Board on or before August 17, 2016, prior to its decision on Plaintiff's application/appeal. The "results" are reflected in the November 3, 2015 letter sent on behalf of the Disability Initial Claims Committee, *see* ASHMORE-369- ASHMORE-370, and the August 24, 2016 letter sent on behalf of the Disability Board, *see* ASHMORE-811- ASHMORE-813.

To the extent Plaintiff seeks additional information, Defendant objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad to the extent that it asks Defendant to identify "all individuals" who "reviewed" Plaintiff's counsel's October 15, 2015 letter and the "results" of any such reviews. Defendant does not know what "reviews" or "results" Plaintiff believes are relevant to Plaintiff's challenge of the Disability Board's determination of Plaintiff's claim for benefits. Defendant's counsel reviewed the October 27, 2015 letter for purposes of preparing Defendant's response to these interrogatories, for example, but that "review" and the "results" of that review are immaterial to Plaintiff's claim.

16. State whether Plaintiff counsel's letter dated October 27, 2015 was presented to the Committee and, if so, the date the letter was presented and the result of the Committee's review of the letter.

ANSWER: Yes. Refer to Defendant's response to interrogatory number 15.

17. State the legal basis for Defendant imposing a deadline of July 19, 2016 for Plaintiff to submit additional documents, records, information, or evidence in connection with his appeal for T&P benefits.

ANSWER: The terms of the Plan provide the basis for the imposition of a deadline. The Plan gives the Disability Board full and absolute discretion, authority, and power to control, implement, and manage the Plan, *see* Plan Section 9.2, ASHMORE-039, including the power to adopt rules and procedures for the administration of the Plan, *see*

Plan Section 9.2(e), ASHMORE-040. The deadline allows NFL Player Benefits Office Staff sufficient time to review and assemble application-related material for presentation to the Disability Board in conjunction with its quarterly meetings.

Department of Labor claim regulations also provide the basis for the imposition of a deadline. *See* 29 C.F.R. § 2560.503-1(i)(3)(ii).

18. State the basis upon which Mr. Ashmore's appeal for T&P benefits was denied as communicated to him via letter dated August 24, 2016, and articulate exactly why he was not entitled to such benefits, including stating each and every fact which was utilized in reaching that determination.

ANSWER: Plaintiff's appeal was denied under Plan Section 3.2(c) because he failed to attend a scheduled neutral examination. *See* ASHMORE-811- ASHMORE-813. The administrative record contains the facts "utilized" in reaching that determination.

19. Identify all individuals, employees, representatives, or agents of Defendant who comprised the Disability Board ("Board") on August 17, 2016 when the Board reached the determination to deny Mr. Ashmore's appeal for T&P benefits, and identify all other individuals involved in the decision to deny Mr. Ashmore's appeal for T&P benefits.

ANSWER: The Disability Board has six voting members. Three voting members are appointed by the NFL Players Association, and three voting members are appointed by the NFL Management Council. *See* Plan Section 9.1, ASHMORE-039.

On August 17, 2016, the voting members of the Disability Board who determined Plaintiff's application/appeal were: (1) Sam McCullum (former Player and appointee of the NFL Players Association); (2) Jeff Van Note (former Player and appointee of the NFL Players Association); (3) Robert Smith (former Player and appointee of the NFL Players Association); (4) Katie Blackburn (Cincinnati Bengals, appointee of the NFL Management Council); (5) Dick Cass (Baltimore Ravens, appointee of the NFL Management Council); and (6) Ted Phillips (Chicago Bears, appointee of the NFL Management Council). *See* ASHMORE-806- ASHMORE-809.

The Disability Board made the final decision on Plaintiff's application/appeal. *See* ASHMORE-811- ASHMORE-813.

To the extent this interrogatory seeks the identify of "all other individuals" who may have been somehow "involved" in the Disability Board's decision, Defendant objects on the grounds that it is vague and ambiguous, overly broad as to time and scope, and not reasonably calculated to lead to the discovery of admissible evidence.

20. Please identify all documentation, including all medical records, relating to Mr. Ashmore's appeal for T&P benefits that were presented to the Board and any other decision makers for review prior to its August 17, 2016 meeting.

ANSWER: The following documents were presented to the Disability Board:

- ASHMORE-073- ASHMORE-080
- ASHMORE-091- ASHMORE-094
- ASHMORE-096
- ASHMORE-098
- ASHMORE-100- ASHMORE-101
- ASHMORE-110- ASHMORE-111
- ASHMORE-113- ASHMORE-341
- ASHMORE-343- ASHMORE-347
- ASHMORE-349- ASHMORE-350
- ASHMORE-369- ASHMORE-370
- ASHMORE-372- ASHMORE-592
- ASHMORE-596- ASHMORE-616
- ASHMORE-618- ASHMORE-789
- ASHMORE-791- ASHMORE-804

The Disability Board was the only "decision maker" with respect to the final decision on Plaintiff's application/appeal.

21. Please list the names of all individuals who reviewed the documentation identified in interrogatory number 20, their position, and the date(s) they reviewed the documentation.

ANSWER: The documentation identified in response to interrogatory number 20 was presented to the Disability Board on or before August 17, 2016, prior to its decision on Plaintiff's application/appeal. Refer to Defendant's response to interrogatory number 19 for the names and positions of the Disability Board members.

To the extent Plaintiff seeks additional information, Defendant objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad to the extent that it asks Defendant to identify "all individuals" who "reviewed" numerous documents contained in the administrative record. Defendant does not know what "reviews" Plaintiff believes are relevant to Plaintiff's challenge of the Disability Board's determination of Plaintiff's claim for benefits. Defendant's counsel reviewed the documents for purposes of preparing Defendant's response to these interrogatories, for example, but that "review" is immaterial to Plaintiff's claim.

22. Identify all documents, records, or information, relating to Defendant's review, request for a review, or obtaining a review of Mr. Ashmore's medical records and information in connection with his application for T&P benefits without regard to whether the report or opinion was relied upon in making a determination in his application for T&P benefits.

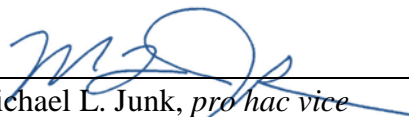
ANSWER: Defendant interprets this interrogatory as seeking information about any medical reports or medical reviews concerning Plaintiff that were requested by Defendant. Subject to that interpretation, there are no documents beyond those contained in the administrative record, which has already been compiled and produced to Plaintiff.

23. Please identify all verbal and written communication and/or correspondences between Defendant and legal counsel relating to Mr. Ashmore's application for T&P benefits, and state the date, subject matter, and nature of such communications and/or correspondences and identify the persons involved in the communications and/or correspondences.

ANSWER: Any communications between legal counsel and the Disability Board *prior to* the Disability Board's final decision on Plaintiff's application/appeal are contained in the administrative record, which has already been compiled and produced to Plaintiff.

To the extent Plaintiff seeks information about communications with legal counsel *after* the Disability Board reached its decision on Plaintiff's application/appeal, Defendant objects to this interrogatory on the grounds that it is overly broad as to time and scope, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects on the grounds that the interrogatory seeks information protected from discovery by the attorney/client privilege and/or the work product doctrine.

Dated: June 5, 2017



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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2017, a true and correct copy of the foregoing RESPONSE TO PLAINTIFF'S INITIAL INTERROGATORIES was served upon the following counsel of record for Plaintiff in the manner indicated below:

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Dated: June 5, 2017


Michael L. Junk, *pro hac vice*
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